

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DISABLED PATRIOTS OF AMERICA, INC.,  
and BONNIE KRAMER,

Plaintiffs,

CASE NO.: 1:06-CV-2889

vs.

JUDGE CHRISTOPHER A. BOYKO

PORT HOSPITALITY, LLC,

Defendant.

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**FINAL DEFAULT JUDGMENT**

**THIS CAUSE** came before the Court on the Plaintiffs' Motion for Entry of Default Against Defendant for Failure to Defend, and the Court having considered the motion, having reviewed the pleadings, papers and supporting declaration filed herein, being otherwise duly advised in the premises, it is hereby

**FOUND, ORDERED AND ADJUDGED** as follows:

1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, for Plaintiffs' claims arising under 28 U.S.C. §§12181, *et seq.*, based upon Defendant's violation of Title III of 42 U.S.C. §§ 12181, *et seq.*

2. Defendant is the owner and operator of the real property and improvements which are the subject of this action commonly referred to as the Baymont Inn & Suites, located at or about 1421 Golden Gate Boulevard, Cleveland, Ohio (hereinafter, the "Facility").

3. Defendant has discriminated against the Plaintiffs, who are individuals with a disability, by denying full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the subject Facility as provided by 42 U.S.C. §§12181, *et*

seq., and by failing to remove architectural barriers and thereby providing Plaintiffs appropriate access to the subject Facility, as required by 42 U.S.C. §12182(b)(2)(A)(iv). Specifically, the Court finds as follows:

#### PARKING

**Barrier:** There are multiple parking spaces with 3 spaces designated as accessible parking. The 3 designated accessible parking spaces in front of the hotel do not provide the required signage. The designated accessible parking space also does not provide an access aisle that level and smooth.

**Remediation:** Install compliant signage as per ADAAG Section 4.6.4. Create a level and smooth access aisle that complies with the ADAAG Sections 4.6, 4.3 and 4.5.

#### ACCESSIBLE ROUTE

**Barrier:** An accessible route is not provided at the side of the hotel. The stair handrails do not provide the required extensions. Interior stairs do not provide the required handrails on both sides of the stairs.

**Remediation:** Mount directional signage indicating the accessible entrance to comply with the ADAAG Section 4.1.6 (1) (h). Mount compliant handrails and handrail extensions at the stairs to comply with ADAAG Section 4.9.4

**Barrier:** The required handrail extensions are not provided on the stairs. Non-compliant hardware is utilized on the door leading to the stairs. The elevators do not provide the required Braille lettering both sides of the jambs.

**Remediation:** Mount compliant handrails and handrail extensions at the stairs to comply with the ADAAG Section 4.9.4. Install compliant door hardware to comply with the ADAAG Section 4.13.9. Mount signage with Braille lettering on elevator door jambs at each story level to comply with the ADAAG Section 4.10.5.

#### ACCESS TO GOODS AND SERVICES

**Barrier:** The tables are 28" above the finished floor ("AFF") and do not provide the required knee clearance. The registration counter is 38" AFF and an alternate counter or facilitation is not provided.

**Remediation:** Provide tables to comply with the ADAAG Section 4.32.3. Install a lowered registration counter, an auxiliary counter, or provide equivalent facilitation as per ADAAG Section 7.2

### PUBLIC RESTROOMS

**Barrier:** The toilet is not mounted at the required height. The toilet seat cover dispenser encroaches on the clear space needed to access the side grab bar. The lavatory does not provide the required knee clearance and compliant faucet hardware.

**Remediation:** Install a toilet to comply with the ADAAG Section 4.16.3. Install toilet seat cover dispenser as per ADAAG Section 4.27.2 & 4.27.3. Install grab bars as per ADAAG Section 4.16.4, Fig. 29(b). Install a lavatory to comply with the ADAAG Sections 4.19.2 and 4.19.5.

**Barrier: Gym restroom:** The men's restroom does not provide compliant signage and door hardware as required. Also, the required latch side clearance to exit is not provided. A compliant standard stall with the required grab bars is not provided. The toilet paper dispenser encroaches on the clear space needed to access the side grab bar.

**Remediation:** Install compliant signage and door hardware as per ADAAG Sections 4.30 and 4.13.9. Create latch side door clearance as per ADAAG Section 4.13.6 Fig. 25. Create a compliant toilet stall with grab bars as per ADAAG Section 4.17.3 Fig. 30(a). Install toilet paper dispenser as per ADAAG Section 4.17.3, Fig. 30(d).

**Barrier – Gym restroom:** The coat hook is mounted above the required reach ranges. The required alarms are not provided.

**Remediation:** Install additional coat hook that is within the reach range as per ADAAG Section 4.27.3. Install alarms as per ADAAG Section 4.28.

### ACCESSIBLE SLEEPING ROOMS

**Barrier:** There are 98 rooms with 3 rooms designated as accessible. Four accessible rooms plus 1 accessible room with a roll-in shower are required. None of the designated rooms have bathrooms with roll in showers.

**Remediation:** Create an accessible room with a roll-in shower to comply with the ADAAG Sections 9.1.2 and 9.1.3.

### DESIGNATED ACCESSIBLE SLEEPING ROOMS

**Barrier:** The room door does not provide the required signage. The required latch side door clearance is not provided to exit the room. Desk provides knee clearance of only 24" in height.

**Remediation:** Mount door signage to comply with the ADAAG Section 4.30. Create latch side clearance to comply with the ADAAG Section 4.13.6. Elevate the desk to comply with the ADAAG Section 4.32.3.

**Barrier:** The furniture controls require a tight grasp and pulling to operate. Lamp controls require grasping and twisting. Storage closet provides a rod and shelf mounted at non-compliant heights.

**Remediation:** Replace the furniture and lamp controls to comply with the ADAAG Section 4.27.4. Create a closet to comply with the ADAAG Section 4.25.3.

#### **BATHROOM IN ACCESSIBLE SLEEPING ROOM**

**Barrier:** The restroom door provides non-compliant hardware. The toilet does not provide compliant grab bars and the flush valve is not mounted on the wide area of the toilet. The toilet is mounted at a non-compliant height.

**Remediation:** Install door hardware as per ADAAG Section 4.13.9. Install toilet and grab bars as per ADAAG Sections 4.16.4 Fig. 29 (b) and 4.16.5.

**Barrier:** The sink does not provide compliant hardware. Lavatory pipes are exposed and unwrapped. The toilet paper dispenser encroaches on the clear space to access the side grab bar. Alarms are not provided in the restroom.

**Remediation:** Replace lavatory to comply with the ADAAG Sections 4.19.4 and 4.19.5. Install a toilet paper dispenser as per ADAAG Section 4.17.3 Fig. 30 (d). Install alarms as per ADAAG Section 4.28.

**Barrier:** The coat hook is not mounted at a compliant height. Bath controls are not close to the side and a shower cord is not provided. Grab bars provided in tub are not compliant and a tub seat is not provided.

**Remediation:** Install additional coat hook that is within the reach range as per ADAAG Section 4.27.3. Install bath controls and a shower cord to comply with the ADAAG Sections 4.20.5 and 4.20.6. Provide a tub seat and install grab bars to comply with the ADAAG Sections 4.20.3 and 4.20.4.

4. Defendant shall have three (3) months from the date that this Order is entered to complete the Remediations set forth above to the Facility as required hereby. Upon completion, Defendant shall file a verified certificate of completion with the Court acknowledging that all work has been complete. The time period for completion by Defendant shall be subject to acts of God, *force majeure*, or events beyond the control of Defendant such as inability to obtain



building or zoning permits, failure of the city/ county inspectors to make inspections, contractor defaults or work stoppages. In the event of such unforeseen circumstances, the time period for completion of the barrier removal, alterations and modifications provided in Paragraph 1 will be extended by the number of days reasonably attributable to such delay-causing event as long as Defendant immediately files a motion with the Court for an extension of time, before the expiration of the deadline to comply, and provides written notice to Plaintiffs, which includes the specific reasons for the delay, the estimated time for completion and Defendant makes a good faith effort to effect implementation as soon as reasonably possible thereafter.

5. The Court finds that Plaintiffs are the prevailing party, and that Plaintiffs are therefore entitled to recover their reasonable attorneys' and expert's fees, litigation expenses and costs from Defendant, and this Court retains jurisdiction for the determination and award thereof.

ORDERED in Cleveland, Ohio, this 18<sup>th</sup> day of JANUARY, 2008.

Christopher R. Boyko  
UNITED STATES DISTRICT JUDGE

Copies provided to:  
Counsel of Record  
*Pro Se* Parties

**FILED**

JAN 18 2008

CLERK OF COURTS  
U.S. DISTRICT COURT, N.D.O.  
CLEVELAND